## MEMORANDUM DECISION




ATTORNEYS FOR APPELLANTS

Jonathan E. Lamb
John A. Cremer
Cremer & Cremer
Fishers, Indiana

ATTORNEYS FOR APPELLEE

Jeffrey A. Lawson
Covington, Kentucky

Peter Campbell King
Peter King Law, PSC
Columbus, Indiana

# IN THE COURT OF APPEALS OF INDIANA

In re Supervised Estate of Laura E. Barker

Elizabeth J. Hollrah and Janice Stacy, individually, and as Co-Personal Representatives of the Estate of Laura E. Barker, deceased, and Dewey R. Barker,

*Appellants-Respondents,*

v.

Corinne R. Finnerty, as Personal Representative of the Estate of Dewey P. Barker,

*Appellee-Petitioner*

June 29, 2022

Court of Appeals Case No. 21A-ES-2433

Appeal from the Decatur Circuit Court

The Honorable Timothy B. Day, Judge

Trial Court Cause No. 16C01-1906-EU-38

**Crone, Judge**

## Case Summary

[1] Elizabeth J. Hollrah and Janice Stacy, individually and as co-personal representatives of the estate of Laura E. Barker, deceased, and Dewey R. Barker (Appellants) appeal an order in favor of Corinne Finnerty, as successor personal representative of the estate of Dewey P. Barker. Finding no reversible error in the determination of a breach of fiduciary duty and no abuse of discretion in the damages award, we affirm.

## Facts and Procedural History

[2] A separate panel of this Court outlined much of this case's extensive, complex history:

> Laura E. Barker ("Barker") and Dewey P. Barker ("Dewey P.") were husband and wife. They had three children: Dewey R. Barker ("Dewey R."), Elizabeth Hollrah, and James Barker ("James"). James predeceased his parents leaving three children, Connie L. Barker ("Connie"), Lisa R. Barker ("Lisa"), and Victoria Williams.
>
> Dewey P. died on February 13, 2002. The last will and testament of Dewey P. provided, among other bequests, that the residue of his estate go to Union Bank & Trust Company to hold to benefit Barker. It also provided that, upon termination of the trust, the balance was to be divided among Dewey R., Hollrah, and Connie, Lisa, and Williams.
>
> On April 20, 2019, Barker died. Barker's last will and testament bequeathed a certain set of dishes to her grandchild, Lisa, and a

certain vase to her grandchild, Connie. Among other bequests, the last will and testament also bequeathed the "rest, residue and remainder of my property, both real and personal of any type whatsoever in equal shares in value, with one share to each of my children Elizabeth J. Hollrah and Dewey R. Barker who shall survive me, and one-share to the issue per stirpes of each of my said named children who shall not survive me." In her last will and testament, Barker nominated and designated her daughter Hollrah to serve as executor and provided that Hollrah may nominate another person to serve as co-executor.

On May 8, 2019, Hollrah filed a Petition for Probate of Will, Issuance of Letters and Unsupervised Administration in the Shelby Circuit Court under cause number 73C01-1905-EU-30. The petition alleged Barker was domiciled in Decatur County, Indiana, when she died. Hollrah asserted Barker's last will and testament designated her to serve as personal representative, and she nominated Stacy to serve as co-personal representative and noted that Item XI of the will provided for unsupervised administration without bond. That same day, Dewey R. filed a Consent and Authorization to Appointment of Personal Representatives for Estate.

On May 13, 2019, the Shelby Circuit Court entered an Order Granting Probate of Will, Issuance of Letters and Leave to Administer Estate Without Court Supervision and Without Bond. That same day, the court entered a Notice of Unsupervised Administration stating that Hollrah and Stacy were appointed personal representatives of the Estate. On June 6, 2019, Hollrah and Stacy filed a Proof of Notice of Administration Upon Beneficiaries.

Meanwhile, on May 23, 2019, Lisa and Connie filed in the Shelby Circuit Court a motion titled "Motion to Transfer Estate to Decatur County, To Remove the Non-Resident Personal Representative Until a Proper Bond Has Been Posted and To

Convert To a Supervised Estate." They asserted in part that there were significant questions concerning the handling of the assets of the Dewey P. Estate while under the control of Barker or Hollrah following the death of Dewey P. On May 24, 2019, Hollrah and Stacy filed an objection to the motion and asserted that notice and a hearing were required upon petition for removal of a personal representative. On May 28, 2019, Lisa and Connie filed a reply.

On May 30, 2019, Dewey R. filed a Confirmation By Child of Decedent As To Approval of Personal Representatives. That same day, the Shelby Circuit Court entered an order stating that Lisa and Connie had "moved the Court to transfer this matter to Decatur County pursuant to I.C. 29-1-7-1 and Trial Rule 75(B), to remove the non-resident Personal Representative, Elizabeth J. Hollrah, for failing to comply with I.C. 29-1-10-1 and to convert the matter to supervised administration." The court ordered "that this matter shall be transferred to Decatur Circuit Court by the Personal Representative within twenty days" and that the "Personal Representative shall pay the costs chargeable for the transfer and shall see that all papers and records filed in this Court are certified and delivered to the Decatur Circuit Court upon transfer."

….

On July 11, 2019, the Decatur Circuit Court set a hearing on all pending matters in cause number 16C01-1906-EU-38, the cause from which this appeal arises, at the same time as a hearing scheduled for July 28, 2019, on all pending matters in the Dewey P. Barker Estate under cause number 16C01-0207-ES-41. …

> On July 25, 2019, the Decatur Circuit Court entered an order stating that "having reviewed the pleadings filed in this cause of action and having conducted a telephonic pretrial with counsel of record [the court] determines that it is in the best interest of all parties involved that an unrelated, independent personal representative be appointed by the Court and this estate administered as a supervised estate." The court appointed Attorney Don Wickens as the personal representative of the Estate and vacated all scheduled hearings.
>
> On August 19, 2019, Hollrah and Stacy filed a motion to reconsider the court's July 25, 2019 order. On August 21, 2019, Connie and Lisa filed a response. That same day, Hollrah and Stacy filed a reply, and the court entered an order denying the motion to reconsider and stating that "[t]he Court's removal/appointment was at the suggestion of the parties' attorneys."

[3] *Hollrah v. Estate of Barker*, No. 19A-EU-1978, 2020 WL 1671601, at *1-*2 (Ind. Ct. App. Apr. 6, 2020) (citations omitted) (reversing July 25, 2019 order and finding the trial court did not hold hearing on Lisa and Connie's request to remove Hollrah and Stacy as personal representatives as required by statute).[1] For consistency, we shall use the same names the April 2020 memorandum decision employed as we outline additional relevant background.

[4] While the disagreement about whether to appoint an independent personal representative for Barker's estate was pending, Hollrah and Stacy, as personal

[1] Stating that the April 2020 memorandum decision reinstated Hollrah and Stacy as personal representatives, Wickens petitioned for allowance of fees; the lower court approved said petition.

representatives of Barker's estate, filed an accounting for the estate of Dewey P. In their July 18, 2019, filing of accounting, they noted that a $23,000 sum "mistakenly distributed" to Barker in 2005 was repaid via deposit to Dewey P.'s estate on June 11, 2019. Appellants' App. Vol. 3 at 7. The parties do not dispute that Barker, while acting as personal representative of Dewey P.'s estate, deposited in her own account a $23,000 certificate of deposit that was property of Dewey P.'s estate. Citing Indiana Code Section 29-1-16-6, Hollrah and Stacy also noted the court should set a hearing upon the accounting. *Id*. at 8.

[5] On July 25, 2019, the trial court appointed Corinne Finnerty successor personal representative for the estate of Dewey P. Appellants' App. Vol. 4 at 179. In August 2019, Finnerty filed a claim in Barker's estate for Barker's alleged failure to properly administer Dewey P.'s estate and for any resulting losses to Dewey P.'s estate. Appellants' App. Vol. 3 at 48-49. Barker's estate, via Wickens, denied this claim in a September 2019 filing. *Id*. at 62. Yet, later in September 2020, Barker's estate tendered a check for $11,874.87 to Finnerty to restore Dewey P.'s estate for its lost share of the $33,700 proceeds of a 2010 sale of a portion of real property.[2] Appellants' App. Vol. 4 at 179.

[6] In January 2021, Finnerty filed a motion for summary judgment arguing that Barker's actions related to the $23,000 CD and the $11,874.87 proceeds from

[2] For $33,700, Barker deeded to Decatur County 0.145 acres of real estate in which Barker owned half in fee and half as a life estate tenant. The deed involved a condemnation action and specified that $7,200 was for land and improvements, and $26,500 was for damages. Appellants' App. Vol. 4 at 188-92. No objections were made to the $11,874.87 calculation.

the sale of real property constituted both conversion and a violation of fiduciary duty, thus supporting a finding of liability. Hollrah and Stacy filed a response and a cross-motion for summary judgment, asserting that Finnerty's claims were more appropriately raised as objections to the accounting filed in Dewey P.'s estate.

[7] That same month, Lisa and Connie filed what they termed an "administrative expense claim" against Barker's estate to reimburse them for $50,169.54 in attorney fees that they spent pursuing the return of the CD and real estate proceeds from Barker's estate to Dewey P.'s—actions required because of Barker's alleged breach of fiduciary duty and fraud under Indiana Code Section 29-1-1-24, Appellants' App. Vol. 5 at 2,6.

[8] After a hearing, in June 2021, the trial court issued an order denying Hollrah and Stacy's cross motion for summary judgment and denying liability on Finnerty's conversion claim. Appellants' Appendix Vol. 6 at 47. The court

> enter[ed] judgment and determine[d] as a matter of law that [Barker], while acting in her capacity as Personal Representative, breached her fiduciary duties to the Estate of Dewey P. Barker as it relates to the transfer of the [$23,000 CD] to her personal account, as well as executing a Deed in her individual capacity for real property that was owned in part by the Estate of Dewey P. Barker and receiving [$33,700] personally, which in fact were, at least partially, Estate funds.

*Id*. Hearings regarding damages for the breach and for the "administrative claim" were held in June and August 2021.

[9] In October 2021, the trial court issued findings of fact and conclusions thereon in the unsupervised estate of Barker, granting the $50,169.54 "administrative expense claim" of Lisa and Connie. Appellants' App. Vol. 6 at 141-50. Hollrah and Stacy, individually and as personal representatives of Barker's estate, appealed the $50,169.54 judgment. A separate panel of this Court recently reversed the trial court's order that Barker's estate pay Lisa and Connie's attorney fees. *Hollrah v. Barker*, No. 21A-ES-2432, 2022 WL 1742134, at *10-*11 (Ind. Ct. App. May 31, 2022) (concluding: "the attorney fees incurred by Lisa and Connie did not constitute expenses of administration of [*Barker's*] estate" but rather were incurred to preserve assets of Dewey P.'s estate) (emphasis added).

[10] Also in October 2021, the trial court issued separate findings of fact and conclusions of law in the supervised estate of Barker. Appellants' App. Vol. 4 at 151-74. This order determined that Barker, as personal representative for Dewey P.'s estate, failed to establish the testamentary trust,[3] and therefore was not entitled to interest payments or net income from Dewey P.'s estate during her lifetime. The court also referenced its prior entry of summary judgment that concluded Barker had breached her fiduciary duty as personal representative by commingling and appropriating funds that belonged to Dewey P.'s estate into her personal account. Citing Indiana Code Section 29-1-16-1, the court found

[3] This is one point on which the parties agree. At no time did Barker – either at the age of eighty-one (when her husband died) or at any time prior to her own death at ninety-eight – ever establish the trust required by Dewey P.'s will.

Barker personally liable for her breach and awarded $97,314.49 in total damages, including $50,510.66 in lost interest expenses of the improperly commingled assets, $27,607.30 in attorney fees to verify damages for the breach, $2,971.66 for Finnerty's successor personal representative fees to pursue the breach, $4,350 in expert fees, and $11,874.87 in real estate proceeds.

## Discussion and Decision

### Section 1 – The trial court did not commit reversible error in addressing a breach of fiduciary duty claim brought by the successor personal representative of Dewey P.'s estate against Barker's estate for Barker's actions as personal representative of Dewey P.'s estate.

[11] Appellants assert that the trial court committed reversible error by not holding a separate hearing regarding the accounting of Dewey P.'s estate prior to issuing the $97,314.49 damages award against Barker's estate. That is, Appellants question the propriety of the trial court addressing the ramifications of Barker's breaches of her fiduciary duty toward Dewey P.'s estate within the context of Barker's estate rather than within the confines of Dewey P.'s estate.

[12] The current appeal arose from a summary judgment order and a related Trial Rule 52 judgment with findings of fact and conclusions thereon.[4] We review a court's ruling on a summary judgment motion de novo, applying the same

[4] Finnerty made the motion for Trial Rule 52 findings.

standard as the trial court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). Summary judgment is appropriate if the designated evidence shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). We must accept as true those facts established by the designated evidence favoring the non-moving party. *Brill v. Regent Commc'ns, Inc.*, 12 N.E.3d 299, 309 (Ind. Ct. App. 2014), *trans. denied*. "Any doubt as to any facts or inferences to be drawn therefrom must be resolved in favor of the non-moving party." *Buddy & Pals III, Inc. v. Falaschetti*, 118 N.E.3d 38, 41 (Ind. Ct. App. 2019) (quoting *Goodwin v. Yeakle's Sports Bar & Grill, Inc.*, 62 N.E.3d 384, 386 (Ind. 2016)), *trans. denied*. "The party that lost in the trial court bears the burden of persuading us that the trial court erred." *Hamilton v. Hamilton*, 132 N.E.3d 428, 434 (Ind. Ct. App. 2019). An appellate court may affirm summary judgment if it is proper on any basis shown in the record. *Bah v. Mac's Convenience Stores*, *LLC*, 37 N.E.3d 539, 546 (Ind. Ct. App. 2015) (citations and some quotation marks omitted), *trans. denied* (2016).

[13] Where the trial court has entered special findings of fact and conclusions thereon, we will "not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). We must determine whether the evidence supports the findings and whether those findings support the judgment. *In re Paternity of C.S.*, 964 N.E.2d 879, 883 (Ind. Ct. App. 2012), *trans. denied*. We consider the evidence most favorable to the

trial court's judgment, and we do not reweigh evidence or reassess the credibility of witnesses. *D.C. v. J.A.C.*, 977 N.E.2d 951, 954 (Ind. 2012). We will find clear error only if "the record does not offer facts or inferences to support the trial court's findings or conclusions of law." *Rogers v. Rogers*, 876 N.E.2d 1121, 1126 (Ind. Ct. App. 2007), *trans. denied* (2008). A judgment is clearly erroneous if it relies on an incorrect legal standard. *Estate of Kappel v. Kappel*, 979 N.E.2d 642, 652 (Ind. Ct. App. 2012), *trans. denied*. We owe no deference to a trial court's determination of questions of law; thus, de novo review is appropriate. *Id*.

[14] Although twenty years have passed since Dewey P.'s death, and three years since his ninety-eight-year-old widow died, disputes regarding the couple's intertwined estates live on. These two estate causes have proceeded within the same court in front of the same trial judge, which may or may not have been the least complicated,[5] most expedient approach to resolving the cases. *See Matter of Kingseed's Estate*, 413 N.E.2d 917, 923 (Ind. Ct. App. 1980) (noting long-established policy that estates "shall be settled as speedily as possible"). Regardless, we do our best to disentangle the cases as necessary and address the issues presented.

---

[5] Indeed, as noted in the most recent prior appeal, the attorney retained by Lisa and Connie testified via deposition that his work concerned both Barker's estate and Dewey P.'s estate: "I think the whole process was to make sure that the assets were properly accounted for; and in order to do that, the litigation was going to be involving both estates." *Hollrah*, 2022 WL 1742134, at *8. Moreover, in what may be described as an understatement, one of the experts who reviewed whether the attorney fees were reasonable noted that this was "not just a simple case." Tr. Vol. 2 at 35.

[15] This first issue, whether the trial court properly heard this controversy in Barker's estate, is a determination of law, therefore, we apply de novo review. Appellants correctly note that upon the filing of "any account in a decedent's estate, hearing and notice thereof shall be had[.]" Ind. Code § 29-1-16-6. However, "[*a*]*t any time prior to the hearing* on an account of a personal representative, any interested person may file written objections to any item or omission in the account." Ind. Code § 29-1-16-7 (emphasis added). The court "*may* disapprove the account in whole or in part and surcharge the personal representative for any loss caused by any breach of duty." Ind. Code § 29-1-16-8 (emphasis added). A personal representative "*shall* be liable" for "any loss to the estate arising from" her "commingling of the assets of the estate with other property" or for "any other negligent or wilful act or nonfeasance in [her] administration of the estate by which loss to the estate arises." Ind. Code § 29-1-16-1(c) (emphasis added).

[16] The death of a personal representative complicates matters:

> If the personal representative dies …, his account shall be presented by his personal representative or the guardian of his estate to, and settled by, the court in which the estate of which he was personal representative is being administered and the court shall settle the account as in other cases. The personal representative of the deceased personal representative shall have no authority as such to proceed with the administration.

Ind. Code § 29-1-16-9(a).

[17] When Barker died, she had compiled no accounting of Dewey P.'s estate. Instead, after Barker's death, her personal representatives created and filed an accounting on her behalf for Dewey P.'s estate. However, on July 25, 2019, one week after Appellants filed the accounting, the court appointed Finnerty to be the successor personal representative of Dewey P.'s estate. *See* Ind. Code § 29-1-10-7 ("When a personal representative dies … the court may, and if [s]he was the sole or last surviving personal representative and administration is not completed, *the court shall appoint another personal representative*.") (emphasis added). Thus, from then on, Finnerty became the new fiduciary in charge of preserving and administering Dewey P.'s estate. In her role, Finnerty began investigating Dewey P.'s estate. Less than a month after her appointment to this complex case, Finnerty filed a claim in Barker's estate for Barker's alleged failure to properly administer Dewey P.'s estate and for any resulting losses to Dewey P.'s estate. Appellants' App. Vol. 4 at 179-83.

[18] Although Wickens (then serving as what turned out to be a temporary appointed personal representative of Barker's estate) denied Finnerty's claim against Barker's estate, a check was tendered shortly thereafter from Barker's estate to Dewey P.'s estate. By then, Finnerty had confirmed that both the CD and the real estate matters had been mishandled when Barker was personal representative. As successor personal representative of Dewey P.'s estate, Finnerty had a duty to determine the amount of losses that had resulted from the mishandling of the CD and the real estate matters. Accordingly, she filed a motion for summary judgment arguing that Barker's actions related to the CD

and the real property constituted both conversion and a violation of fiduciary duty, thus supporting a liability claim against Barker's estate. Eventually, she presented substantial evidence regarding damages related to the breach of fiduciary duty.

[19] Appellants have directed us to no case that would limit Finnerty's actions or restrict her choices on how to meet her fiduciary obligations.[6] To the contrary, Indiana Code Section 29-1-13-3 provides that every "personal representative shall have full power to maintain any suit in any court of competent jurisdiction" for the recovery of possession of "any property of the estate." Finnerty's suit to recover the losses stemming from Barker's commingling of assets, per Indiana Code Section 29-1-16-1(c), falls within the powers of the successor personal representative to collect and manage the estate's assets until the estate is closed. *See Inlow v. Henderson*, 787 N.E.2d 385, 393 (Ind. Ct. App. 2003) ("The responsibility and duty of maintaining claims, along with the general management of the estate, falls to the personal representative."), *trans. denied*. Furthermore, given that both estate cases (with different cause numbers) have been weaving through the same court with the same judge, no serious argument can be asserted that Finnerty was attempting to evade the standard accounting process. The lack of a final accounting in Dewey P.'s estate does not alter the conclusion that the trial court did not commit reversible error in

---

[6] Interestingly, during earlier related proceedings, Hollrah (along with Dewey R.) asserted that Finnerty "as personal representative has the sole authority to act with regard to" Dewey P.'s estate. *See* Appellants' App. Vol. 3 at 79 (Nov. 22, 2019 Response of Beneficiaries).

adjudicating Finnerty's breach of duty suit against Barker's estate under these circumstances.

## Section 2 – The trial court did not err in determining that Barker's breach caused losses to Dewey P.'s estate.

[20] In challenging the denial of their cross-summary judgment motion, Appellants do not contest the fact that Barker, as personal representative, failed to open or fund the trust for Dewey P.'s estate at any time between 2002, when Dewey died, and her death in 2019. Likewise, there is no dispute that Barker deposited the CD and real estate proceeds in her own account, thus commingling them, rather than collecting these assets of Dewey P.'s estate in a timely manner and properly accounting for them. Appellants maintain that because Barker otherwise held a lifetime interest in the CD and real estate proceeds, her breach of duty caused no actual losses to Dewey P.'s estate.

[21] Again, we are guided by the relevant statute:

> *Every personal representative shall be liable for any loss to the estate arising from his neglect or unreasonable delay in collecting … assets of the estate* or in selling, mortgaging or leasing the property of the estate; for neglect in paying over money or delivering property of the estate he shall have in his hands; for failure to account for or to close the estate within the time provided by this article; for *any loss to the estate arising from* his embezzlement or *commingling of the assets of the estate with other property*; for loss to the estate through self-dealing; … and for any other negligent or wilful act or nonfeasance in his administration of the estate by which loss to the estate arises.

Ind. Code § 29-1-16-1(c) (emphases added). A personal representative cannot commingle estate funds with her own money thus profiting from the use of estate funds. *See Fall v. Miller*, 462 N.E.2d 1059, 1063 (Ind. Ct. App. 1984); *see also In re Bender*, 844 N.E.2d 170, 181 (Ind. Ct. App. 2006) ("The Indiana Probate Code holds a personal representative personally liable for all estate property the personal representative comes to possess and, specifically, for any loss to the estate through self-dealing."), *trans. denied*.

[22] Preliminarily, we note that Indiana Code Section 29-1-16-1(c) refers repeatedly to "any loss" and to "loss" – not to "actual loss." Regardless, we disagree with the contention that Barker's breach did not result in loss – any or actual. Without the establishment of the trust, no income stream for Barker ever existed. Not until Barker's death, seventeen years after her husband's death, did Dewey P.'s estate begin to get sorted out properly. Indeed, it was not until 2019 that Barker's estate finally returned to Dewey P.'s estate the $23,000 CD that Barker had deposited into her own account in 2005. Similarly, no attempt to transfer the sale proceeds from the 2010 condemnation real estate transaction to Dewey P.'s estate occurred until 2020.

[23] Although the very belated efforts to transfer the commingled assets mitigated the loss to Dewey P.'s estate, we cannot say that Dewey P.'s estate did not sustain any losses during the seventeen-year span when Dewey P.'s trust was never established and when assets were mishandled. To the contrary, as more fully outlined in the next section, it was the lost opportunity of growth during the seventeen-year delay in properly collecting assets of Dewey P.'s estate that

constituted the loss to Dewey P.'s estate due to Barker's breach. None of the cases cited by Appellants compels a different conclusion. *See Root's Estate v. Blackwood*, 120 Ind. App. 545, 555, 94 N.E.2d 489, 495 (1950) (reversing and ordering a new trial where lower court did not find executor liable for his failure to sell or distribute corporate stock for four years, by which time stock was likely worthless). If anything, *Root's Estate* cuts against Appellants' argument that losses could not be recouped for Barker's breach. *See also Riddell Nat'l Bank v. Englehart*, 123 Ind. App. 517, 525,105 N.E.2d 357, 359 (1952) (concluding that administrator's failure to timely file a final report constituted no actionable wrong because said failure simply resulted in estate being subject to valid debts of decedent; beneficiaries of estate did not lose anything to which they were entitled). In contrast, Barker's breaches resulted in losses to which Dewey P.'s estate was entitled.

[24] In *In re Estate of Wheat*, 858 N.E.2d 175, 182-83 (Ind. Ct. App. 2006), we concluded that a personal representative was not liable for excessive distributions of estate funds when the beneficiaries could reimburse the estate and make it whole. Barker did not mistakenly distribute estate funds, but instead failed to establish the trust and took possession of the CD and real estate proceeds that should have been collected as part of Dewey P.'s estate. As such, Appellants have not demonstrated error either in the trial court's denial of their cross-motion for summary judgment or its related relevant findings of fact and conclusions thereon concerning losses.

## Section 3 – The trial court did not commit reversible error with respect to determining damages for lost interest.

[25] Appellants contend that the $50,510.66 portion of the damages award was speculative and therefore punitive. They take aim at the expert testimony of Tracy Wyne, who they claim failed to take into account Barker's "life time interests" in Dewey P.'s estate. Appellants' Br. at 25.

[26] "The amount of damages awarded is a question of fact for the trier of fact." *Winters v. Pike*, 171 N.E.3d 690, 700 (Ind. Ct. App. 2021). A trial court is not required to calculate damages with mathematical certainty; rather, "the calculation must be supported by evidence in the record and may not be based on mere conjecture, speculation, or guesswork." *Jasinski v. Brown*, 3 N.E.3d 976, 979 (Ind. Ct. App. 2013). All uncertainties concerning the specific calculation of damages are resolved against the tortfeasor. *Id*.

[27] Finnerty hired Wyne to determine the lost interest on the mishandled CD and real estate proceeds. At the time she testified, expert witness Wyne had been working in southern Indiana for at least ten years as a CPA. Tr. Vol. 2 at 10-11. In making her determinations, Wyne calculated the overall growth of the inventory of assets to be approximately 7.2%, noted the 6%-10% range within the prejudgment interest statute, examined other factors that would apply 7% as an appropriate rate, and confirmed that certain stock in Dewey P.'s estate had increased in value annually at a rate of 13%. *Id*. at 12-14.

[28] Wyne determined that a principal amount of $23,000, compounded annually using a 7% rate[7] would have grown to $60,932.74 between January 19, 2005 (when Barker deposited the CD into her own account) and June 11, 2019 (when Barker's estate repaid Dewey P.'s estate $23,000). Ex. Vol. 1 at 4. Wyne determined that a principal amount of $11,874.87, compounded annually using a 7% rate, would have grown to $24,452.79 between January 20, 2010 (when the deed was issued) and September 21, 2020 (when Barker's estate tendered an $11,874.87 check to Dewey P.'s estate). *Id.* She then added $60,932.74 to $24,452.79, subtracted $23,000 and $11,874.87 (because she was under the impression that Barker's estate had already returned those amounts to Dewey P.'s estate), and found the net amount due to be $50,510.66. *Id.*

[29] Without reweighing the evidence or reassessing witness credibility, we cannot say that the record does not offer facts or inferences to support the $50,510.66 damages resulting from Barker's fiduciary breach. Further, the logic behind the calculation is readily ascertainable, not speculative or based on guesswork. Appellants have demonstrated no reversible error in this regard.

---

[7] Stephen Plunkett, a CPA with decades of experience employed by Barker's estate, testified that the growth rate for an account for Dewey P.s' estate was 6.9% and that said rate was consistent with his understanding of the growth of stocks and bonds during that time period. Tr. Vol. 2 at 105. Plunkett's 6.9% and Wyne's 7% rates were easily in the same ballpark.

## Section 4 – The trial court did not abuse its discretion in its award of attorney fees, expert fees, and personal representative fees.

[30] Appellants challenge the $34,928.96 award of attorney fees, expenses, personal representative fees, and expert witness fees. They assert that the fees incurred by Dewey P.'s estate postdate Barker's estate's voluntary redressing of Barker's breach of fiduciary duty and therefore should not be recoverable. Additionally, Appellants argue that "a sizeable portion of the fees awarded by the trial court were incurred for purposes of pursuing an action alleging conversion." Appellants' Br. at 29. Because the conversion claim was unsuccessful, Appellants maintain, the overall award should be reduced.

[31] Indiana generally adheres to the American rule that a party must pay his own attorney's fees absent an agreement between the parties, a statute, or other rule to the contrary. *Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453, 458 (Ind. 2012). However, attorney fees are available for a fiduciary's wrongdoing in an estate, and such fees should be paid by the fiduciary personally. *In re Bender*, 844 N.E.2d at 185 (concluding that as matter of deterrence, equity demands that the fiduciary personally pay for attorney fees incurred to prevent him from acting outside his own fiduciary powers).[8]

---

[8] *See also In re Stahl's Estate*, 44 N.E.2d 529, 113 Ind. App. 29 (1942) (executor who incurs liability to his trust through neglect or bad advice of his counsel cannot escape such liability because responsibility for proper administration rests with executor). To the extent that Barker, in her ninth decade when she assumed her duties over her husband's estate, may have misunderstood the legal advice she was given, the trial court took that into consideration and accordingly eliminated the conversion claim on summary judgment. *See* Tr. Vol.

[32] When determining the value of services rendered by a personal representative or attorney in an estate matter,

> the trial judge may consider many factors, including the labor performed, the nature of the estate, the difficulties encountered in recovering assets and locating heirs, settlements in the estate, the peculiar qualifications of the administrator, his or her faithfulness and care, and all other factors necessary to aid the court in a consideration fair to the estate and reasonable for the personal representative and attorneys.

*Estate of Clark v. Foster & Good Funeral Home, Inc.*, 568 N.E.2d 1098, 1101 (Ind. Ct. App. 1991) (citation omitted). The determination of a reasonable fee lies within the sound discretion of the trial court and will not be overturned absent an abuse of discretion. *Id*.

[33] While Barker's estate reimbursed Dewey P.'s estate for $23,000 prior to Finnerty's appointment as successor personal representative, Barker's estate did not reimburse for the losses associated with the $23,000 that was mishandled for over a decade. Further, not until Finnerty began her investigation was the $11,874.87 check tendered, and when it was, the check included no interest or other reimbursement. Finnerty's extensive dive into Dewey P.'s estate, assisted by legal and accounting experts, was the catalyst for making Dewey P.'s estate whole after Barker's yearslong breach of fiduciary duty. Absent the efforts of

---

2 at 5. We sympathize with Barker's predicament and note that prudent estate planning involves periodic review with the hope of preventing such situations.

Finnerty, the counsel Finnerty employed to pursue the matter, and the experts who testified, the failure to establish the trust and the mishandling of the assets would not have been rectified. The record of the damages hearing shows that the trial court was presented with significant testimony and supporting documentation regarding the various fees. The trial court then crafted findings consistent with the evidence. As such, we cannot say that the trial court abused its discretion by awarding attorney fees, expenses, personal representative fees, and expert witness fees.

[34] As for the amount of fees that may have been generated by the unsuccessful conversion theory, the trial court eliminated the conversion claim during summary judgment. Subsequently, hearings were held regarding damages incurred due to the breach of fiduciary duty. Barker's estate points us to nowhere in the record where evidence was permitted regarding fees generated by the conversion claim.[9] To the extent the two theories did not overlap, Barker's estate has not demonstrated that it challenged the evidence on this ground during the damages hearings. The trial court determined that $34,928.96 in attorney and personal representative fees "*to prosecute the breach of fiduciary duty against*" Barker's estate was "reasonable and necessary to advance the interests of" Dewey P.'s estate in this cause. Appealed Order at 22-23 (emphasis added). That is, the damages resulted from the fiduciary breach

[9] Additionally, treble damages, which a conversion finding could warrant, were not awarded.

rather than the alleged conversion. Accordingly, we cannot say the trial court abused its discretion.

[35] Affirmed.

Vaidik, J., and Altice, J., concur.